

REMARKS/ARGUMENTS

The Applicants have carefully considered this application in connection with the Examiner's Action and respectfully request reconsideration of this application in view of the foregoing amendment and the following remarks.

The Applicants originally submitted Claims 1-20 in the application. The Applicants have amended Claims 1, 2, 5, 11, 12 and 15 and have canceled Claims 7 and 17. Accordingly, Claims 1-6, 8-16 and 18-20 are currently pending in the application.

I. Rejection of Claims 1, 3-5, 9-11, 13-14, 16 and 19-20 under 35 U.S.C. §102

These claims are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,527,059 to Benninghoven, et al. (Benninghoven). For the following reasons, Benninghoven fails to teach each element of the presently claimed inventions, and therefore, fails to anticipate the rejected claims.

As noted by the Examiner, Benninghoven teaches a laser activated mass spectrometer that has a sample holder 25 for holding a sample 17 thereon. However, there is no teaching whatsoever of the portable sample holder as now presently recited in these claims. For example, there is no teaching of the sampler body with a plunger slidably contained within the sampler body and having an actuating end, the platen coupled to the plunger, and the spring that is cooperatively coupled to the plunger and configured to retract the platen within the sampler body.

Therefore, Benninghoven does not disclose each and every element of the claimed invention and as such, is not an anticipating reference for independent Claims 1 and 11 and their respective

dependent claims. Accordingly, the Applicants respectfully request the Examiner to withdraw the §102 rejection with respect to these Claims.

II. Rejection of Claims 2, 6-8, 12 14 and 16-19 under 35 U.S.C. §103

These claims are rejected under 35 U.S.C. §103(a) as being unpatentable over Benninghoven in view of U.S. Patent No. 3,940,995 to Harris, et al. (Harris 995') or U.S. Patent No. 4,404,862 to Harris, et al. (Harris 862'). As discussed above, Benninghoven does not teach the elements of the independent Claims 1 and 11, from which these claims respectively depend. However, there is also no suggestion of such elements in Benninghoven. The mass spectrometer of Benninghoven does not teach a need for the sampler to include a plunger and cooperative spring that retracts the platen into the body of the sampler. The sampler as taught and suggested by Benninghoven is a stationary sample for a very large and sophisticated spectrometer.

To provide a teaching of the plunger, the Examiner relies on the teachings of Harris 995' or Harris 862'. However, while both Harris 995' and Harris 862' do disclose plungers, there is no teaching or suggestion of a plunger with a cooperative spring that is configured to retract the platen into the sampler body as recited in these claimed inventions. Moreover, one who is skilled in the art would not be motivated to arrive at the presently claimed inventions given the combined teachings of Benninghoven, Harris 995' and Harris 862'.

The plunger in Harris 995' is operated by a pneumatic device that is required to precisely inject fluid into the septum inlet 90, (Column 8, lines 25-42), thus, there is no need for a spring and even if substituted in accordance with the Examiner's assertion, it would not provide the required degree of uniform injection control. The plunger in Harris 862' is positioned between a thread cap

18 and a spring stop 15₂. The thread cap 18 can be adjusted to provide a desired, preselected force on the spring 17 to adequately seat the seal 15 within the conical entry 7, but yet avoid excessive force which can damage the needle. (Column 4, lines 7-29). Thus, the spring is not cooperatively used with a plunger to retract the platen into the sample body. To the contrary, its sole purpose is to provide appropriate force on the tubular extension member 15. Furthermore, there is no motivation to attach the end of the needle 15 in Harris 862' to a platen on which a sample might reside because Harris 862' is directed to a needle used for injecting samples into a gas chromatograph, which would interfere with the operation of the injection needle.

Thus, even when given the combined teachings of Benninghoven, Harris 995' and Harris 862, there is simply no suggestion or teaching of the sampler body presently recited in these dependent claims, and the combination fails to teach or suggest each and every element of these claims. Therefore, the asserted combination fails to establish a *prima facie* case of obviousness regarding these claims.

In view of the foregoing remarks, the cited references do not support the Examiner's rejection of Claims 2, 6-8, 12 14 and 16-19 under 35 U.S.C. §103(a). The Applicants therefore respectfully request the Examiner withdraw the rejection.

III. Rejection of Claim 15 under 35 U.S.C. §103

This claim is rejected under 35 U.S.C. §103(a) as being unpatentable over Benninghoven in view of U.S. Patent Publication No. 2002/0063201 to Houge, et al. (Houge). As discussed above, Benninghoven does not teach or suggest the elements of Claim 11 on which Claim 15 depends. Houge does not cure the deficient teachings of Benninghoven. The Examiner relies on Houge only

for the teaching of a spectrometer that rotates the sample into the position facing the mass spectrometer, and there is no other teaching or suggestion of the elements presently recited in Claim 11 in the asserted combination that would render the invention of Claim 15 obvious. Therefore, the asserted combination fails to establish a *prima facie* case of obviousness regarding these claims.

In view of the foregoing remarks, the cited references do not support the Examiner's rejection of Claim 15 under 35 U.S.C. §103(a). The Applicants therefore respectfully request the Examiner withdraw the rejection.

IV. Conclusion

In view of the foregoing amendment and remarks, the Applicants now see all of the Claims currently pending in this application to be in condition for allowance and therefore earnestly solicit a Notice of Allowance for Claims 1-6, 8-16 and 18-20.

The Applicants request the Examiner to telephone the undersigned attorney of record at (972) 480-8800 if such would further or expedite the prosecution of the present application.

Respectfully submitted,

HITT GAINES, P.C.

A handwritten signature in black ink, appearing to read "Charles W. Gaines". The signature is fluid and cursive, with the first name "Charles" and last name "Gaines" clearly distinguishable.

Charles W. Gaines
Registration No. 36,804

Dated: 12/12/03

P.O. Box 832570
Richardson, Texas 75083
(972) 480-8800